



**Billing Code: 3510-33-P**

## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

#### **15 CFR Part 762**

**[Docket No. 140905755-4755-01]**

**RIN 0694-AG30**

### **Request for Public Comment on the Recordkeeping Requirements of the Export Administration Regulations**

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Bureau of Industry and Security (BIS) is seeking public comment on the recordkeeping requirements of the Export Administration Regulations (EAR). BIS is reviewing its requirements on record retention and record creation and is considering proposing revisions to such requirements. BIS seeks public comment on ways to improve the recordkeeping

requirements of the EAR to reduce unnecessary burden, increase clarity, address changes in technology and data management, and maintain the tools necessary for compliance with and enforcement of the EAR. This advance notice of proposed rulemaking is part of BIS's retrospective regulatory review being undertaken pursuant to Executive Order 13563.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments may be submitted to the Federal rulemaking portal (<http://www.regulations.gov>). The regulations.gov ID for this notice of inquiry is: BIS-2014-0035. Comments may also be submitted via e-mail to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694–AG30 in all comments and in the subject line of e-mail comments. All comments (including any personally identifying information) will be made available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Steven Emme, Office of the Assistant Secretary for Export Administration, 202-482-5491, [steven.emme@bis.doc.gov](mailto:steven.emme@bis.doc.gov).

## **SUPPLEMENTARY INFORMATON:**

### **Background**

On August 5, 2011, the Bureau of Industry and Security (BIS) published a notice of inquiry in the Federal Register (76 FR 47527) seeking comments pertaining to a retrospective regulatory review being conducted by BIS pursuant to Executive Order 13563, which President Barack Obama issued to improve regulation and regulatory review. Among other things, the President stressed the need for the regulatory system to allow for public participation and an open exchange of ideas, as well as promote predictability and reduce uncertainty. The President also emphasized that regulations must be accessible, consistent, written in plain language, and easy to understand. Through its notice of inquiry on this retrospective regulatory review, BIS sought comments on aspects of the Export Administration Regulations (EAR) that are not immediately affected by the Export Control Reform (ECR) initiative and that could improve clarity in the EAR or streamline requirements to improve efficiency and reduce burden.

Consistent with that notice of inquiry, this advance notice of proposed rulemaking seeks public comment on BIS's recordkeeping requirements. The recordkeeping requirements are primarily in part 762 of the EAR and apply to both the export control provisions and antiboycott provisions of the EAR. Part 762 describes, *inter alia*, those transactions and persons subject to recordkeeping requirements in § 762.1, as well as those records required to be maintained in § 762.2 for the duration described in § 762.6. While most recordkeeping requirements pertain to documents that are created for purposes other than retention (e.g., to obtain an export license or

to file Electronic Export Information), some provisions of the EAR require the creation of a document solely for record retention purposes. Section 762.2 refers to those sections of the EAR that either require the creation of a record or otherwise reference recordkeeping requirements. Additionally, part 762 describes requirements on maintaining original records or reproductions, as well as producing records for inspection.

The recordkeeping provisions have not been comprehensively reviewed since part 762 became effective in 1996. While BIS previously updated part 762 to take into account electronic submissions of license applications and other requests under the SNAP-R system, BIS has not reviewed the recordkeeping requirements to take into account changes in data management systems and record retention practices since that time. In addition, BIS has not comprehensively analyzed part 762 and compared it to the recordkeeping requirements of similar regulations, such as the International Traffic in Arms Regulations (ITAR) administered by the Department of State. Under ECR, BIS has been working with the Department of State to harmonize key terms where possible. The structure and form of the EAR recordkeeping requirements vary greatly from the structure and form of the ITAR recordkeeping requirements, as only one section in the ITAR (22 CFR 122.5) describes the required retention of records. While this advance notice of proposed rulemaking is not part of ECR, BIS will take into account the provisions of the ITAR if beneficial to the EAR.

## **Request for Public Comments**

BIS is considering proposing revisions to the recordkeeping requirements of the EAR to more effectively describe those records and persons subject to the requirements while attempting to reduce burden, improve clarity, take into account current data management processes, and maintain the necessary tools for effective compliance and enforcement. In order to propose such revisions, BIS seeks public comment on all aspects of its recordkeeping requirements. BIS would like to receive public comments that are as specific and well-supported as possible. Helpful comments will include a description of a problem or concern, available data on cost or economic impact, and a proposed solution. BIS also welcomes comments on aspects of the current recordkeeping provisions that are considered effective or well designed. In particular, BIS invites the public to submit comments on the following issues:

- 1) How have the current recordkeeping requirements of the EAR positively or negatively affected organizations? Quantitative analyses on this topic would be beneficial.
- 2) Are there any recordkeeping provisions or references to documents that are out of date? Are there provisions in the recordkeeping requirements that should be updated to take into account technological changes in how business is conducted and records are maintained?
- 3) Should the recordkeeping provisions make transactional distinctions on when records should be created or maintained? For instance, should intangible transfers of technology or software be treated differently than tangible exports or reexports for record creation and record retention

purposes? Or would it be preferable to avoid making distinctions in order to have more clear and concise requirements?

4) Would be efficient to make a distinction in Part 762 between provisions that require the *maintenance* of records created in the ordinary course of business as opposed to those that require the *creation* of records for export control purposes that would not otherwise be created in the ordinary course of business?

5) Are there any record creation requirements in the EAR that should be reviewed or revised?

6) Are there any recordkeeping requirements under U.S. or other law that would serve as good examples for the EAR?

Comments should be submitted to BIS as described in the Addresses section of this notice of inquiry by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. BIS will consider all comments submitted in response to this advance notice of proposed rulemaking that are received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them. All public comments in response to this advance notice of proposed rulemaking must be in writing and will be a matter of public record,

and will be available for public inspection and copying on the BIS Freedom of Information Act (FOIA) Reading Room at <http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents>.

Dated: September 25, 2014.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

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